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COMMISSION ON HUMAN RIGHTS

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SUMMARY RECORD OF THE 33rd MEETING

Held at the Palais des Nations, Geneva,
on Monday, 21 February 1994, at 3 p.m.

Chairman: Mr. van WULFFTEN PALTHE (Netherlands)

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The meeting was called to order at 3.20 p.m.

QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT, IN PARTICULAR:

(a) TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

(b) STATUS OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

(c) QUESTION OF ENFORCED OR INVOLUNTARY DISAPPEARANCES

(d) QUESTION OF A DRAFT OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (continued)

(E/CN.4/1994/24, 25 and Add.1, and Corr.1 and Add.1, 27, 28, 29 and Add.1, 30-33, 88 and Corr.1, 93 and Corr.1, and 103; E/CN.4/1994/NGO/5, 8, 10, 11, 18, 19, 21 and 25; E/CN.4/Sub.2/1993/8, 9, 23/Rev.1, 24 and Add.1-2, and 25; E/CN.4/Sub.2/1992/10; A/48/520)

1. Mr. LEE (Republic of Korea) said that his delegation agreed that the elimination of torture should be a priority item on the Commission's agenda. In his report, the Special Rapporteur on the question of torture described systematic torture on a massive scale which, in some cases, amounted to a method of warfare against minorities. That practice, which was particularly common in the former Yugoslavia, was totally unacceptable, as was the fact that in many countries women and children were the main victims of such human rights violations.

2. In the view of his delegation, the Commission needed to pay more attention to the issue of impunity. In that regard, the Vienna Declaration and Programme of Action stipulated that "States should abrogate legislation leading to impunity for those responsible for grave violations of human rights such as torture and prosecute such violations, thereby providing a firm basis for the rule of law". Impunity posed a threat to both national and international mechanisms for the protection of human rights, and Governments as well as the international community must make a commitment to combat violations of the rule of law.

3. Although the Working Group on Arbitrary Detention had been established only recently, its activities had attracted more attention than expected from Governments and non-governmental organizations (NGOs). Unfortunately, the Group's work was constrained by limited access to information, and his delegation hoped it would endeavour to expand its sources of information and fact-finding functions. As the Working Group had pointed out, it could not act as a court of appeal and his delegation wondered whether the Group's strict use of adversarial procedure and the speed with which it took its decisions was really appropriate in the light of its mandate.

4. The Korean Government endorsed the role of the Commission's working groups and special rapporteurs, and considered that expansion of their

activities should be accompanied by an increase in the resources allocated to the Centre for Human Rights. In that connection, it was regrettable that, owing to insufficient resources, certain sessions of the Working Group had had to be cancelled and the activities of a newly appointed special rapporteur restricted.

5. Mr. WORONIECKI (Poland) said he would like first to address the question of the administration of justice from the standpoint of the protection of aliens or, more precisely, the human rights implications of the growing number of persons with alien status in the world. Recent years had been characterized by increasing migration which, as a probable long-term trend, might give rise to major human rights problems at the dawn of the twenty-first century. The Commission should therefore pay due attention to that trend and, in particular, to questions of freedom of movement, the rights of aliens, migrant workers and refugees, replacement rates and the protection of minorities.

6. The Vienna Declaration and Programme of Action made reference to all those aspects of migration. While the rights of aliens were not expressly mentioned in the Vienna document, the emphasis placed on the universality of human rights and fundamental freedoms left no doubt as to the position adopted by the World Conference on Human Rights in that regard. Since the task at hand was to define a medium- and long-term strategy for implementing the programmes adopted and achieving the newly defined aims in the field of human rights, his delegation hoped that the question of the impact of migration on human rights would not be overlooked.

7. The time had come to strengthen the protection of aliens in accordance with the principle of the universality of human rights and fundamental freedoms. Account must be taken in that regard of the actual dynamics of migration and the fact that they affected not only the protection of human rights but also the territorial sovereignty of States, collaboration between States, efforts of the United Nations system and other international organizations and, last but not least, the issue of development. Given the complexity of the matter, the Commission should seek various ways of addressing those problems and preventing the situation from becoming worse. It might, for instance, bear in mind the experience acquired in that area by the International Organization for Migrations (IOM), the Office of the United Nations High Commissioner for Refugees, and the Department of Humanitarian Affairs, as well as the humanitarian assistance provided to displaced persons by the International Committee of the Red Cross and the International Federation of Red Cross and Red Crescent Societies. His delegation hoped that the Commission's revised agenda would not omit the question of the legal protection of aliens and, in particular, of their rights.

8. With regard to the right to freedom of expression, the first report of Mr. Abid Hussain, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (E/CN.4/1994/33), showed that the Commission had acted wisely in establishing that post the previous year. As stressed by the Special Rapporteur in his report, "the right to freedom of opinion and expression is interrelated with, and enhances the exercise of, all other human rights". His delegation endorsed the methodology used by the

Special Rapporteur in carrying out his mandate and joined him in hoping that his activities would be supported by the necessary financial and human resources.

9. In paragraph 30 of the Vienna Declaration, the World Conference on Human Rights expressed its dismay at continuing violations of human rights, including acts of torture and cruel, inhuman and degrading treatment and punishment. In its Programme of Action, it reaffirmed that "freedom from torture is a right which must be protected under all circumstances, including in times of internal or international disturbances or armed conflicts". In paragraph 670 of his report (E/CN.4/1994/31), the Special Rapporteur on the question of torture, Mr. Rodley, observed that the elimination of torture was a matter of political will and its persistence was testimony to the failure of political will. Unfortunately, the conclusion suggested by that report and several NGO reports was that torture continued to be practised on an appalling scale.

10. The World Conference had called for the "early adoption of an optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which is intended to establish a preventive system of regular visits to places of detention" (para. 61). According to paragraph 81 of the report of the Working Group on the draft optional protocol (E/CN.4/1994/85), useful progress had been made at the second session and continuation of the work under the same conditions offered a prospect of the elaboration, within a reasonable period, of a final text which could be of great value in the field of the prevention of torture. The Commission should speed up the preparatory work on the optional protocol and encourage States which had not yet done so to accede to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its optional protocols.

11. There was no doubt that the question of impunity was closely connected with the task of ensuring respect for human rights. The World Conference had expressed its concern about the impunity of those committing human rights violations and had supported the efforts of the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities to examine all aspects of the issue (para. 91 of the Programme of Action). There could be no effective prevention of human rights violations in the absence of real liability on the part of the perpetrators. Amnesty laws must not be invoked in order to grant impunity to those guilty of such violations, who should on the contrary be brought to justice in full conformity with due process. In that regard his delegation endorsed the observations contained in the reports of the Special Rapporteur on the question of torture and the Working Group on Enforced or Involuntary Disappearances.

12. The Working Group's report (E/CN.4/1994/26) revealed that enforced and involuntary disappearances still constituted a major human rights problem. The Declaration on the Protection of All Persons from Enforced Disappearance qualified those acts as an offence to human dignity, a denial of the purposes of the Charter of the United Nations and a grave and flagrant violation of human rights. The report provided a highly instructive analysis of the obstacles to the proper application of the Declaration. His delegation

welcomed the special interest paid by the Working Group to the problem of enforced and involuntary disappearances in the former Yugoslavia. According to the report prepared on the visit paid to that country (E/CN.4/1994/26/Add.1), more than 15,000 disappearances in that territory could be expected in the near future. The report pointed out that the United Nations was perceived as having an independent responsibility with regard to settling the problem of missing persons in the former Yugoslavia. In the view of his delegation, the special process proposed in the report to handle the problem of missing persons in the former Yugoslavia constituted a good institutional response and should be endorsed by the Commission.

13. Consideration of agenda items 10 and 11, which covered a wide variety of human rights problems and procedures aimed at their solution, had confirmed the importance of the appeal of the World Conference to the United Nations to adapt its activities to current and future needs. His delegation had already proposed that the Secretary-General should draw up a human rights agenda to supplement the Vienna Declaration and Programme of Action. It had also proposed the creation of a committee for human rights and humanitarian affairs to improve and coordinate efforts to ensure respect for those rights.

14. Mr. DE SANTA CLARA GOMES (Observer for Portugal) said that the picture emerging from the reports considered under agenda item 10 was especially appalling because the violations reported to the Centre for Human Rights represented just the tip of the iceberg. It was essential that special rapporteurs and working groups should continue their work and, in that connection, his country endorsed the appointment, during the current session, of a special rapporteur on the independence of the judiciary and the protection of practising lawyers, as recommended by the Sub-Commission on Prevention of Discrimination and Protection of Minorities, on the basis of the excellent report prepared by Mr. Joinet.

15. His delegation appreciated the activities of the thematic mechanisms established under agenda item 10 whose purpose was to assess the scope and nature of the violations committed by studying particular cases. However, it was most concerned about the inadequacy of financial resources mentioned in all the reports and hoped that the newly appointed High Commissioner for Human Rights would take steps to rectify the situation as quickly as possible. His country welcomed, in particular, the remarkable results obtained by the Working Group on Arbitrary Detention and commended the discreet, objective and independent manner in which it had fulfilled its mandate. It endorsed the Working Group's recommendations, in particular those concerning habeas corpus, which was considered as a non-derogatory right of the individual, even under a state of emergency. The institution of habeas corpus, the proper functioning of the administration of justice, and the publication of the results of investigations were elements identified by the Working Group as necessary to address the crucial issue of impunity, which was undoubtedly one of the main reasons why human rights continued to be violated systematically in many countries.

16. His delegation congratulated Mr. Rodley, the newly appointed Special Rapporteur on the question of torture, on the quality, objectivity and comprehensiveness of his first report; it fully endorsed the criteria he intended to apply to urgent appeals in order to ensure the effectiveness of

the preventive procedure. The Portuguese Government agreed with the Special Rapporteur's conclusion that the elimination of torture was a matter of political will, as was demonstrated by Portugal's experience of practising democracy over the previous 20 years.

17. As the administering Power of the territory of East Timor, Portugal was responsible for drawing the Commission's attention to information available on the human rights situation in that region, about which the Commission had expressed profound concern the previous year in its resolution 1993/97. Three key reports focused extensively on allegations of human rights violations in Indonesia and East Timor, namely those prepared by the Special Rapporteur on the question of torture, the Working Group on Arbitrary Detention and the Working Group on Enforced and Involuntary Disappearances. From those reports, it could be concluded that Indonesia, a member of the Commission, had failed to comply with its decisions. In particular, it had failed to respond to the request, contained in the resolution mentioned above, to invite the Special Rapporteur on the question of torture, the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Working Group on Enforced or Involuntary Disappearances to visit East Timor and assist them in the performance of their task. Missions and on-the-spot visits for the assessment of situations and the implementation of the tasks entrusted to special rapporteurs and working groups by the Commission were of undeniable importance, and Indonesia's failure to cooperate should be pointed out by the Commission.

18. Those three reports all cited serious human rights violations. The Special Rapporteur on the question of torture had condemned the widespread practice of torture by the Indonesian authorities, noting in particular that military and police officers had allegedly tortured or mistreated a number of suspected government opponents detained in November 1992 and thereafter. Pursuant to the recommendations set out in Professor Koojman's 1992 report, the new Special Rapporteur had mentioned only one measure adopted by the Indonesian Government, namely, the establishment, by the House of People's Representatives, of a human rights commission. Portugal welcomed the adoption of that measure, and hoped the future would confirm that commission's credibility. The Working Group on Arbitrary Detention had studied the case of two prisoners arbitrarily detained and had requested the Indonesian Government to remedy the situation. Portugal hoped that Indonesia would release all persons imprisoned for non-violent activities. The Working Group on Enforced or Involuntary Disappearances had stated that Indonesia was mentioned in its 12 previous reports to the Commission. The total number of outstanding cases or those which, in the view of the Group, had not been resolved, came to 375, of which 28 concerned women; in 1992, the Group had brought 20 new cases of disappeared persons to the attention of the Indonesian Government. Of the total number of missing persons, there was reason to fear that some 200 had met their deaths in the Santa Cruz massacre of 1991, as well as in the killings that had followed. The Indonesian Government had not yet tried or charged with murder those members of the security forces deemed to be responsible for the massacre. Although it had made an effort to furnish replies with regard to some of the cases brought to its attention by the working groups and special rapporteurs, it continued to refuse to implement the recommendations adopted by the Commission at its previous session.

19. It was clear from the reports he had mentioned earlier that Indonesia was invoking the need to maintain civil order, the threat to national security and the existence of subversive plots to justify its actions. Furthermore, the Commission's thematic rapporteurs had noted the close link that existed between those legally vague notions and the encouragement of human rights violations. Portugal drew the Committee's attention to the deep concern expressed by the Special Rapporteur on extrajudicial, summary or arbitrary executions concerning allegations of grave, systematic breaches of the right to life in Indonesia and East Timor. Nevertheless, it welcomed the fact that Indonesia had invited the Special Rapporteur for an on-the-spot visit which, it hoped, would take place in satisfactory conditions. It was vital that the international community should continue to draw attention to the abuses being committed and to encourage Indonesia to take the necessary steps to ensure the full observance of human rights in East Timor.

20. Mr. MEGHLAOUI (Algeria) said that his Government attached the utmost importance to the universal principle of human dignity which was, for historical, cultural and religious reasons, deeply rooted in the collective memory of the Algerian people. He noted that human rights were guaranteed by the Algerian Constitution, by the international conventions to which Algeria was a party, and by various other legal instruments, in particular the African Charter on Human and People's Rights, the International Covenant on Civil and Political Rights together with its Optional Protocol, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. With regard to the latter, he observed that Algeria was one of the 34 countries that had made the declarations envisaged in articles 21 and 22. Furthermore, once ratified, an international convention took precedence over national law, and was automatically incorporated into national legislation. The first Algerian Constitution, dating from 1963, or one year after the declaration of independence, had condemned torture and any form of physical or mental abuse of the human being. The current Constitution guaranteed the inviolability of the individual and prohibited any form of physical or mental violence. Fundamental freedoms, as well as human and civil rights, were therefore the common heritage of the Algerian people.

21. The Algerian Government recognized the importance of the role played by national organizations and various associations in promoting and protecting human rights, whose rapid growth was attributable to the natural dynamism of Algerian society, and he mentioned in particular the Algerian Human Rights League and the Committee against Torture. Although Algeria was fully committed to internationally recognized human rights standards and was constantly endeavouring to promote human rights, it had for some time been confronted with a difficult situation in which attacks against persons and property had assumed unprecedented proportions. In view of the magnitude of the problem, the Government had been obliged to take legal steps to protect persons, property and infrastructure and had, on 30 September 1992, promulgated the law against terrorism and subversive activities. That an emergency law should be criticized and questioned was entirely understandable, but he wished to emphasize in the strongest terms that, despite the adoption of that law, the Government was acting in strict conformity with its international commitments and national legislation. Excesses were indeed sometimes brought to the attention of the judicial authorities and it had been pointed out that prolonging the period of custody gave rise to conditions

conducive to such excesses, but he assured the Commission that custody was prolonged only in the case of crimes or offences against the security of the State and that, in any event, persons who broke the law were dealt with severely and did not benefit from impunity or extenuating circumstances. Once a case was brought to their attention, the judicial authorities initiated the necessary investigation and the accused were liable to long prison sentences. The constitutional rights of citizens wherever they might be were respected in all circumstances. Under article 45 of the Constitution, for example, a person detained in custody had the right immediately to contact his family. When the period of custody ended he had, if he so requested, to be given a medical examination, and in any event had to be informed of his right to one. In the event of imprisonment, the accused had to be examined by a sworn physician who was required to report any signs of ill-treatment he might have detected. The authorities took particular care in ensuring compliance with the Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the United Nations General Assembly.

22. Despite its current difficulties, Algeria was deeply committed to democracy, fundamental freedoms and political pluralism. The Government, which was consistently seeking to ensure the exercise of human rights, was determined to establish a State based on the rule of law and scrupulously to translate its international obligations into practical measures. The Algerian authorities cooperated in a completely transparent manner with the special rapporteurs and working groups, but also with NGOs that were genuinely trying to promote human rights.

23. Mr. FLINTERMAN (Netherlands) stressed the importance that his Government attached to the task of supporting NGOs that sought to protect human rights throughout the world. In many countries they constituted the principal, if not the only, source of information on the subject, and it was therefore vital that they should be able to function effectively and in safety. The Vienna Declaration and Programme of Action, formulated by the World Conference on Human Rights, had acknowledged the important role played by NGOs in promoting all human rights and in humanitarian activities at the national, regional and international levels. The Conference had furthermore commended NGOs for having increased public awareness of human rights issues, for conducting educational, training and research programmes in the field of human rights, and for promoting and protecting human rights and fundamental freedoms. Many NGOs also provided direct assistance to victims of human rights violations, which explained why they were not popular with Governments that violated human rights, some of which went so far as to liken NGOs to terrorist groups.

24. Referring to the question of forced or involuntary disappearances, he noted that, according to the report of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1994/26), 5,500 new cases of enforced disappearance had been brought to its attention in 1993. The Working Group commended the work of NGOs in gathering and channelling information, and noted that in some countries the mere fact of reporting a disappearance entailed serious risk. Furthermore, the relatives of missing persons and members of human rights organizations were often threatened with death if they reported human rights violations.

25. In his view, the Commission should call on Governments to take steps to protect not only the families of disappeared persons, which it was already doing, but also the members of NGOs seeking to defend human rights. The international community needed those organizations if it was to take effective action in preventing forced disappearances. He also commended the quality of the first report submitted by Mr. Rodley, Special Rapporteur on the question of torture (E/CN.4/1994/31), who had similarly stressed the role of NGOs in efforts to combat torture and had in particular emphasized the question of impunity. His delegation would revert to that question subsequently. His country supported the proposals of the Working Group on Arbitrary Detention on ways of strengthening cooperation with NGOs.

26. All the reports indicated that a serious problem being encountered in responding to human rights violations was the inadequacy of the financial and human resources available to the Centre for Human Rights. How could the Commission take itself seriously if it was unable to ensure the implementation of its resolutions? The World Conference on Human Rights had emphasized that the Centre for Human Rights must be provided with the necessary means to enable the thematic and country rapporteurs, experts, working groups, and treaty bodies to perform their work effectively. The Commission must therefore take the necessary action at its current session. In his view, human rights advocates deserved a serious answer from the United Nations and his Government was firmly resolved to redress the situation. The Commission could obviously not function as it did without the assistance of courageous individuals and NGOs who were, in a sense, its eyes and ears, and provided it with information without which it would be unable to perform its task.

27. Mr. MOLINA (Pax Romana) deplored the proliferation of cases of torture and forced disappearances in Peru, which were confirmed by the information available to the Commission's special rapporteurs and working groups. Mr. Ndiaye, for example, in his report on extrajudicial, summary and arbitrary executions (E/CN.4/1994/7/Add.2), condemned the institutionalization of impunity. He also referred to the reports on torture (E/CN.4/1994/31) and forced disappearances (E/CN.4/1994/26). By way of illustration, he mentioned a specific case that was currently causing an outcry in Peru, namely, the disappearance and murder of nine students and a professor from the La Cantuta University in Lima, attributed to members of the national intelligence service with the support of the army. A week previously, the Supreme Court had referred the case to a military court, in flagrant violation of the new Constitution. Since the military courts were not responsible to the judiciary, the Court was violating the principle of the separation of powers in a State subject to the rule of law, and the guarantees with which a trial should normally be hedged about therefore no longer existed. The military courts, which met in camera, could try civilians and sentence them to death (art. 173 of the Constitution of 1993). During the previous 18 months, some 300 civilians had been sentenced to life imprisonment. The Working Group on Arbitrary Detention, in its decision 42/1993 (Peru) (E/CN.4/1994/27) had reached the conclusion that one of those cases constituted arbitrary detention. The person in question had since been released, but the rest remained in prison.

28. Even more serious was the fact that Peruvian military courts were empowered to try both civilians and members of the military for ordinary

offences, as in Guatemala, also in flagrant violation of the principle of the separation of powers. In Peru, final judgements were rendered by senior army and navy officers, who were therefore responsible to the Executive, were not judges and had no competence in judicial matters. In a letter of 20 June 1992 addressed to the German Federal Assembly, the Ministry for Foreign Affairs indicated that only one member of the military had been convicted in 10 years, whereas 300 civilians had been sentenced to forced labour for life between July 1992 and December 1993. In view of that alarming situation, he urged the Commission to adopt decisions with regard to such countries as Peru and Colombia similar to those it had taken in the case of other Latin American countries responsible for serious human rights violations. He also called on the Special Rapporteur on the question of torture, Mr. Rodley, and Mr. Joinet, as Chairman of the Working Group on Arbitrary Detention, to undertake a fact-finding mission to Peru. He then yielded the floor to Mr. Juan Gerardi, who would deal with the situation in Guatemala.

29. Mr. GERARDI (Pax Romana) said that Guatemala was passing through a difficult period of transition. Since the party system had virtually collapsed and there was practically no communication between society and the State, any conflict ballooned out of all proportion, leaving the country on the brink of anarchy. On 25 May 1993, the then President of the Republic had attempted a coup d'état, which failed when various segments of the population rose up to protest the fact that constitutionality was being swept away. The new President of the Republic, Mr. Ramiro de León, who had acquired a sound reputation as human rights ombudsman, and in whom the Guatemalans had high hopes, had proved unable to solve the country's problems. The main cause of human rights violations was widespread economic inequality accompanied by the discrimination and lack of opportunity experienced by over 80 per cent of the population. In addition, cuts in social expenditure and systematic privatization had further aggravated the unemployment problem. There was no longer any way in which the people could claim their economic and social rights, and trade unionists, human rights advocates and other opposition groups were systematically persecuted.

30. Furthermore, the prevailing social paralysis was in marked contrast to the gradual militarization of daily life in rural areas. Civilian self-defence patrols and the system of military commissions which comprised over 500,000 peasants and were the source of human rights violations and various forms of violence, were basic elements of the local power structure. It had become impossible to restore the social fabric in a context where guerrilla fighters, who also systematically violated international humanitarian law, existed side by side with an army pursuing a counter-insurgency policy of overwhelming proportions. The resumption of peace talks as a result of action taken by the United Nations was encouraging, but a monitoring system would have to be established immediately to give effect to the undertaking given by the parties to make peace before too long.

31. Recalling the long list of victims of human rights violations, he deplored the killings of Myrna Mack, Juan Chanay Pablo and Tomás Cipriano Laras (whose murderers, although well known were still free), and of the political leader Jorge Carpio. Extrajudicial executions and forced disappearances were increasing even under the new Government. Furthermore, reported cases of intimidation had tripled since the new President's

assumption of office. Such intimidation was directed at specific targets, such as journalists, human rights advocates, members of NGOs, trade unionists, and members of religious orders. It also appeared that political violence followed a certain pattern in that it was of two kinds: one occurred in rural areas and was carried out by civilian patrols, and the other took place mainly in urban areas, was well organized with secret premises, and targeted certain elements in society who were systematically tortured, both physically and psychologically. In both cases, complete impunity was the rule, due either to the complicity of those responsible for administering justice or to arbitrary laws.

32. In view of those facts he would welcome the appointment of a special representative to monitor and examine the situation, to investigate, and to ensure full respect for human rights and individual guarantees in Guatemala.

33. Mrs. BROWN (Human Rights Watch) deplored the escalation of human rights violations throughout the world in 1993, and said she wished to refer specifically to the situation in certain countries. In China there had been 250 political trials and some 216 new arrests during the year. Almost 80 per cent of those cases concerned Tibet, although Tibetans represented only 0.2 per cent of the Chinese population. For the most part they were peaceable Buddhist monks and nuns who were arrested for "counter-revolutionary acts". At present some 1,700 persons were imprisoned in China for their political or religious opinions, of whom 1,200 had been detained solely for non-violent activities. In view of those figures, the handfuls of prisoners released from time to time were of no great moment. Detainees in Chinese prisons were kept incommunicado for months and torture was widespread. An official newspaper had reported 41 deaths due to torture between 1990 and 1992 in Henan Province alone. Political trials, as well as trials for non-political offences, were based on the "verdict first, trial second" principle. It was noteworthy that common criminals were often ill-treated just as much as political prisoners. At the very least, the international community should demand information on the situation of the 1,700 prisoners known for a fact to be behind bars. Yet the fundamental problem remained that of widespread arbitrary detention, a practice which showed no sign of letting up.

34. Torture was also continuing in Turkey, as the Committee against Torture had noted the previous December. The Criminal Trials Procedure Law passed in 1992, although billed as a reform, permitted 30 days of incommunicado detention for political suspects. More than 90 per cent of political prisoners were tortured during interrogation (electric shocks, rape, savaging by dogs, etc.), as were over 50 per cent of ordinary detainees. During the previous year, 21 persons had died in police custody. In Turkey, the arbitrary detention of both men and women was common. Women could be detained by the police on the slightest pretext, and were often forced to submit to a physical examination to determine their virginity or to detect possible evidence of recent sexual intercourse. A woman who refused such an examination could be detained arbitrarily until she agreed.

35. In Peru, as in Colombia, legal machinery had been introduced, on the pretext of taking action against terrorism and drug trafficking, to suppress non-violent opposition. Since 1992, a Peruvian law imposed heavy penalties not only for terrorist acts but also for non-violent acts, including "advocacy

of terrorism". Human rights activists, lawyers, journalists, environmental advocates, health professionals, political opponents and ordinary citizens had been arbitrarily imprisoned. Sentences of 20 years' imprisonment could be imposed for "collaboration with terrorism". Persons accused of treason - a notion that had been redefined to include non-violent offences such as teaching in a way deemed to favour the guerrillas - were tried by military courts whose members were masked. Detainees could not invoke habeas corpus or amparo, and torture was rife. Conditions of confinement for accused or convicted persons were extremely harsh: lack of water, medical care, food and, for women, systematic harassment. While security concerns could, to a certain extent, justify restrictions in the prison regime, they should be proportional to the inherent risks, and remain within reason. Denial of family visits, medical care, food and reading materials was a flagrant violation of the Standard Minimum Rules for the Treatment of Prisoners and of article 10 of the International Covenant on Civil and Political Rights.

36. She drew attention to the lack of protection of the rights of common prisoners throughout most of the world. Conditions of imprisonment for common prisoners in countries as varied as South Africa, the United Kingdom, Spain, the United States and Venezuela were abysmal. Fairly recently, violence among inmates at a Venezuelan prison had taken over 100 lives, while guards stood by and watched. In the United States, which had one of the highest prison population/total population ratios in the world, security measures were becoming increasingly severe and the prison authorities were not subject to any independent investigations. The rights of common prisoners were thus flouted in a large number of societies, both rich and poor. The international community should pay greater attention to the fundamental rights of people who, in any society, were among the most vulnerable and the least equipped to organize their own protection. Human Rights Watch called on all States to apply international standards guaranteeing the physical integrity of detainees, access to counsel and relatives, and the inalienable right to a fair trial, and urged them to respect the standard minimum rules for the treatment of prisoners.

37. Mr. WANI (World Muslim Congress) said that for 46 years massive violations of human rights had been committed in the Indian occupied State of Jammu and Kashmir. Shootings, arbitrary detentions, looting, rape and custodial killings were characteristic of India's administration of that region. According to the report by a commission of inquiry on the events that had taken place on 22 October 1993 at Bijbehara, men of the 74th Indian battalion had fired indiscriminately at demonstrators who were protesting peacefully against the siege of the Hazratbal shrine by the Indian army, leaving 37 persons dead and 92 injured. A report published by the Institute of Kashmir Studies, Srinagar, stated that it was common practice for the Indian security forces to subject all Kashmiris suspected of opposition to various atrocious forms of torture. Those practices had been condemned by a number of human rights organizations, including Amnesty International and Asia Watch. Many Kashmiris had been imprisoned on the basis of Draconian laws such as the Jammu and Kashmir Public Safety Act, the National Security Act, the Armed Forces Special Powers Act and the Pass Laws which controlled the movements of citizens, and which were simply instruments used to repress the population of the State of Jammu and Kashmir. Arrests and arbitrary detentions were also associated with disappearances, 128 of which had been

reported by Amnesty International. All the leaders of the All-Party Conference on Freedom, considered by Amnesty International to be prisoners of conscience, were still being illegally detained for having protested against the sacrilegious siege of the Hazratbal mosque, and for having openly expressed the aspirations of the population of the State of Jammu and Kashmir. The freedom movement was considered to be subversive and its leaders were the chosen targets of Indian State terrorism. H.N. Wanchoo, a Kashmiri Hindu leader, had been murdered for submitting evidence of Indian State terror to Amnesty International.

38. The World Muslim Congress urged the international community to do everything in its power to stop the violence in Kashmir, to free prisoners of conscience and to ensure the withdrawal of Indian forces from that region. It also called upon the Commission to appoint a special rapporteur to investigate human rights violations committed by Indian forces.

39. Mrs. NUÑEZ (Commission for the Defence of Human Rights in Central America) said that ongoing serious human rights violations in that region were to a large extent the result of the poor administration of justice, and in particular the judiciary's lack of impartiality and independence. In El Salvador, not only had the Government failed to implement any of the recommendations submitted by the Commission on the Truth with a view to reforming the judicial system as the Independent Expert, Mr. Niken, had noted in paragraph 119 of his report (E/CN.4/1994/11), but had even declared a general amnesty in violation of United Nations decisions. The political and administrative power improperly possessed by the Supreme Court was also largely responsible for the impunity enjoyed by human rights violators, and in particular by the members of death squads. If the Government really wanted to improve the human rights situation in El Salvador it could no longer simply condemn those violations and set up ineffective commissions of inquiry. The General Assembly itself had stated, in paragraph 9 of its resolution 48/149, that the capacity of the judicial system to clarify and punish violations continued to be unsatisfactory. The Commission must therefore continue to monitor the situation in El Salvador and accordingly extend the mandate of both the independent expert and of ONUSAL after the elections.

40. Arbitrary detention was also a very widespread problem and a cause for considerable concern in Guatemala, El Salvador, Honduras, Panama and even Costa Rica, where it had been unknown until recently. In Nicaragua, arbitrary mass arrests were the authorities' only response to any strike action or grass-root protests against the restructuring programme. In July 1993, constitutional guarantees had been suspended in 14 districts in the north of the country as part of a campaign against delinquency that the army and police had used to persecute and arrest agricultural workers who opposed the closing down of their cooperatives and who had been demanding respect for their rights in the context of the privatization process.

41. Lastly, enforced disappearances were still taking place in most of the Central American countries, even though the number of cases had fallen in some of them except in Guatemala, where 45 disappearances had been reported by NGOs in 1993. Furthermore, a report on disappearances in Honduras, published by the National Commissioner for Human Rights, Mr. Valladores, indicated that

184 persons had disappeared in that country between 1979 and 1993, at a time when the United States, on the pretext of supporting the Nicaraguan "Contras", had been interfering in the region. That report constituted an encouraging precedent in Central America, as was the decision of the Supreme Court of Honduras to make a thorough investigation of all cases of disappearance, most of which were attributable to the armed forces. The attitude of former President Callejas, who had sought to shield the person mainly responsible, General Discúa Elvir, who had now become head of the Honduran armed forces, and of official spokesmen for the armed forces who had refused to make their records available to the commissioner responsible for the matter, was, however, a cause for concern. The Commission, and in particular the Working Group on Enforced and Involuntary Disappearances, must therefore continue to monitor the situation in that country. Many recent disappearances had not been solved, including those of José Reyes García, José Francisco Rivera Miranda and Miguel Angel García Gómez, three young Nicaraguans who had left the country in search of work and who had not been involved in any political activities. It appeared that the crime rate had increased among members of the Honduran armed forces, who sometimes killed in order to steal, which was what had happened in the case of Juan Pablo Laguna Cruz, murdered in 1993 by members of the Honduran security and police forces.

42. Mr. BLACKWELL (International Education Development Inc.) drew the Commission's attention to the practice of administrative detention and torture in Kashmir, where fundamental freedoms had been virtually abolished since the imposition by the Government of India in that region of the Terrorist and Disruptive Activities Prevention Act, the Jammu and Kashmir Public Safety Amendment Act, the Armed Forces Special Powers Act and the amendments to the Code of Criminal Procedure. According to reports by various international human rights organizations such as Asia Watch, Physicians for Human Rights, the International Federation of Human Rights and Amnesty International, 130 persons had recently disappeared while in detention in Jammu and Kashmir. Most of those who had disappeared were young men suspected of being "militants". Many persons had been arbitrarily arrested and placed in detention. Detainees were not usually brought before a magistrate within 24 hours of their arrest as required by article 167 of the Indian Code of Criminal Procedure, and the police frequently falsified the date of arrest to correspond to that of the day before the detainee eventually appeared before the magistrate. Following their arrest, detainees were taken to interrogation centres where torture was routine.

43. International Education Development Inc. (IED) was convinced that any real solution to the problems of detention and torture in Kashmir must include the conduct of the plebiscite envisaged by the United Nations in 1948 with the explicit agreement of India and Pakistan. Nevertheless, neither Security Council resolution 80/1950 appointing Admiral Nimitz of the United States as Plebiscite Administrator and setting out a series of steps for the expeditious determination of the future of the State of Jammu and Kashmir in accordance with the freely-expressed will of the inhabitants, nor the Simla Agreement signed in 1972 by the Prime Ministers of India and Pakistan had been implemented. During his visit to Kashmir as a member of a mission organized by the Human Rights Foundation working in conjunction with IED, Mr. Blackwell had been struck by the heavy military presence of India in Kashmir which had resembled a war zone. It was that war which was causing human rights

violations in that area, a war waged by the Kashmiris since the entry of Indian troops into their territory in 1947. It was not a civil war, as India's occupation of Kashmir had never been accepted by the international community, but rather a war of a people acting in legitimate defence of their right to self-determination. It was because of that war that the Indian Government was applying the above-mentioned laws to Kashmir, in contravention of articles 9 and 14 of the International Covenant on Civil and Political Rights.

44. Past failures should not deter the United Nations from its present efforts to settle the issue. The Commission should, in the first place, call on all parties to the conflict to sign a cease-fire and on the Government of India to withdraw its troops from Kashmir and put an immediate end to human rights violations in the region. The Commission should also appoint a rapporteur or set up a working group to investigate the situation in Kashmir, or ask the Secretary-General to send a representative there for that purpose. Moreover, the Government of India should grant permission to all international human rights and humanitarian organizations to go to Kashmir to conduct investigations and to the ICRC to inspect detention centres there. Lastly, the Governments of India and Pakistan should include Kashmiri representatives in all discussions concerning the status of Kashmir.

45. Mr. OZDEN (Centre Europe-Tiers monde) said that impunity was still a problem in Chile where, following four years of "democratic transition", virtually none of the torturers operating under General Pinochet's regime had been tried or sentenced for their crimes, with the exception of General Contreras who had been tried for the execution of Orlando Letelier, and a number of subordinate officers. It was clear that the political will to try the guilty and render justice to the families of the victims was lacking in Chile. Yet, crimes against humanity were imprescriptible. The international community as a whole, and all States that had signed the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity must therefore face their responsibilities and ensure those acts did not remain unpunished. Too many laws "closing the books" had already been promulgated in Latin America. It was not too late to take action in respect of Chile.

46. The human rights situation in Turkey was also a cause for considerable concern. In 1993, 3,758 persons had been killed and 1,490 others injured during clashes between the Turkish army and Kurdish guerrillas, 25 persons had died as a result of torture, 32 persons had disappeared while in police custody, and 510 persons had been the victims of summary executions. Centre Europe-Tiers monde wished to draw the Commission's attention to the inhuman conditions of detention prevailing in Turkish prisons, where hunger strikes among prisoners, as a sign of protest, had been common in recent years, and also to the systematic practice of torture by the police, which had been exposed in reports by the European Committee for the Prevention of Torture (E/CN.4/1993/NGO/22) and the United Nations Committee against Torture (A/48/44/Add.1). The press was also subjected to repressive measures. Many journalists had been killed or imprisoned and newspapers and periodicals seized. The heaviest toll had been paid by the pro-Kurd newspaper "Özgür Gündem", 16 of whose staff, including 6 journalists, had been killed, and over 200 arrested, and all issues of which had been seized in

January 1994. Nor were political parties spared. In 1993, four had been prohibited by the Turkish Constitutional Court, namely, the People's Labour Party (HEP), the Socialist Party (SP), the Freedom and Democracy Party (ÖZDEP) and the STP. The parties in question were often favourable to the Kurdish cause, the leaders of which were frequently arrested and tortured by paramilitary forces, if not killed, as in the case of Mehmet Sincar and Mehmet Özdemir on 4 September 1993 at Batman, while they were investigating summary executions in that town. More than 60 leaders or members of those parties had been killed, while others were persecuted and threatened. In 1993, 48 association headquarters had been closed by the Turkish authorities. The situation was continuing to deteriorate, as evidenced by the establishment of two new State security courts at Istanbul, bringing their number to five, and the preparation of a new draft law on the administration of provinces, providing all governors with the special powers already granted to the governors of the Kurdish provinces.

47. In conclusion, he referred to the case of an Israeli prisoner, Mordechai Vanunu, who had been held for the previous seven years incommunicado in a cell measuring 2 x 3 metres in conditions that Amnesty International had described as cruel, inhuman and degrading. His only crime had been to reveal in 1986, that his country was building up a large secret nuclear arsenal, a fact later confirmed by a number of investigations. The way in which he had been kidnapped in Rome by the Mossad in 1986 in violation of all rules of international law, his secret trial and the conditions in which he was detained constituted a flagrant violation of human rights. Centre Europe-Tiers monde therefore urged the Commission to approach the Israeli authorities, which had remained deaf to previous appeals by the European Parliament, and request them to release Mordechai Vanunu immediately as an indication of their desire for peace, because there was no reason of security that could possibly justify his continued detention, and also to reconsider the case of the Israeli professor, Marcus Kleinberg, who had been sentenced for similar reasons.

48. Mr. BOS (International Federation for the Protection of the Rights of Ethnic, Religious, Linguistic and Other Minorities) wished to draw attention to the tragic situation of Muslims in the Sanjak region of the former Yugoslavia. The Muslim National Council of Sanjak had recently made an urgent appeal concerning grave human rights violations committed against Muslims in that area. It was feared that the clashes taking place in Bosnia and Herzegovina might spread to the Sanjak region, especially as all the Muslim leaders who continued to advocate a peaceful solution to the Sanjak issue had been imprisoned and the Muslim population could therefore be easily manipulated and provoked by the authorities. The Commission should therefore follow the situation in Sanjak in order to prevent the outbreak of another war in that region.

49. The situation remained deplorable in many parts of the world, such as the Aceh regions of West Papua and East Timor under Indonesian control. In his latest report (E/CN.4/1994/31), the Special Rapporteur on the question of Torture had reported evidence of instances of torture and ill-treatment inflicted at all levels of the military command structure and in dozens of security force installations. In other areas, the lands of the Jammu

community were in the hands of the Bengali authorities which had organized the settlement of those lands by Bengalis and set up a large number of military encampments there. Tensions between the Jammu community and the Bengali settlers, assisted by the Bangladesh army, had given rise to a bloody incident on 17 November 1993 at Naniarchar Thana, where a peaceful rally organized by a student council had been attacked by settlers and by the Bangladesh army. According to official sources, 19 members of the Jammu community and 1 Bengali settler had been killed.

50. Lastly, the situation in Bougainville was of particular concern following the blockade of the island by the Government of Papua New Guinea. Not only had the blockade prevented medical and other essential supplies from reaching the population, but reports of torture, disappearances and extrajudicial public executions had also emerged. The Government of Papua New Guinea had not authorized any humanitarian aid for the island's population and it was imperative that the Commission should take the necessary measures to help the thousands of innocent civilians who were victims of the conflict in Bougainville. The Commission could, for example, request the Secretary-General to appoint a special envoy to investigate the human rights situation in Bougainville and to facilitate dialogue and negotiations between the parties to the conflict.

51. Mr. MITCHELL (World Student Christian Federation) commended the Working Group on Arbitrary Detention on its work and strongly supported the renewal of its mandate. Referring to the Working Group's conclusions and recommendations and specifically to paragraph 61 of its report (E/CN.4/1994/27), concerning the legal rules allowing for arrest with no subsequent criminal trial, he pointed out that such provisions were frequently invoked to arrest students engaged in peaceful political activities. Miralyn Gamba, a member of the Student Christian Movement of the Philippines, had been arrested by a civilian paramilitary defence force in June 1993. During her detention she had been subjected to psychological torture and sexual harassment. It was not until 12 days after her arrest that the grounds for it had been announced, namely, illegal possession of firearms. Human rights advocates were familiar with the use made of that provision by the Philippine armed forces when they wished to arrest individuals for their political activities. Those provisions were still in force under the current democratically elected Government, and since President Ramos had taken office in July 1992 over 1,000 persons had allegedly been arrested for political reasons. His organization therefore asked the Philippine Government to take decisive measures to abolish the civilian paramilitary defence forces, to release all political prisoners and to repeal all national security laws.

52. Another country where legal provisions had been used against students for political purposes was Myanmar. Decision No. 38/1993 of the report of the Working Group on Arbitrary Detention concerned student leaders. The names that appeared in that decision represented only the tip of the iceberg in terms of the true numbers of individuals arbitrarily detained for political reasons in Myanmar. His organization wished in particular to draw the Commission's attention to the case of Min Ko Naing, a student leader, who had been arrested in 1991 and held in solitary confinement in deplorable conditions.

53. The very existence in a country of such legal provisions allowing emergency measures to be taken was a constant threat for all its inhabitants. That was true of Myanmar as well as the Republic of Korea, where national security laws were still being used to suppress student activists, as evidenced by the Working Group's decision No. 28/1993. His organization therefore requested the Government of the Republic of Korea to respond to the Working Group's requests in respect of decision No. 28/1993, to release all prisoners of conscience and to repeal the National Security Law. Furthermore, it urged China and Indonesia to comply with the Working Group's request to undertake missions to China and East Timor.

54. Mr. GULDERE (Turkey), speaking in exercise of the right of reply, noted that the Austrian representative had referred to a public statement by the Committee against Torture concerning Turkey. According to the summary record of 28 December 1993 of the Meeting of States parties to the Convention (CAT/SP/SR.5), the Chairman of the Meeting had said that he was concerned about the alleged disparity between the confidential report and the summary record. And he had added: "All members of the Committee should, when investigating any country, bear in mind the fact that the credibility of their findings and their reports depended above all on their objectivity", pointing out that the Turkish authorities had cooperated with the members of the Committee during their investigations. He had also stated that "In return, all countries, not only Turkey, needed to be sure that Committee members would act responsibly and with respect". The meaning of that statement was clear: if the summary record had been "credible" and "objective", and if the Committee members had acted "responsibly" and with respect, the Chairman would not have made that observation. Why then, had the Austrian delegation taken a sudden interest in the human rights violations that had allegedly occurred in Turkey? Why had it remained silent on agenda item 14, while Turks were faced with continuing racist violence and discrimination in Austria?

55. Mr. QUANINE (Bangladesh), speaking in exercise of the right of reply, said that the reference by the representative of Pax Christi International to the massacre of the indigenous Jumma people in the Chittagong Hill Tracts was both unfortunate and unwarranted since his country's authorities had managed, after considerable effort, to persuade the members of the Chakma tribe - who were conducting a terrorist struggle - to sit down at the negotiating table. The negotiations had been successful and the Chakma refugees had begun to return home. Certain persons who wished the confrontation to continue were using the Commission on Human Rights to make unfounded accusations. If a massacre had indeed taken place, Chakma refugees would not be going back to Bangladesh. As for the incident that had taken place in November 1993 and to which the representative of the International Federation for the Protection of the Rights of Ethnic, Religious, Linguistic and Other Minorities had referred, he recalled that the Minister of the Interior and other political leaders had made an on-the-spot visit, offered their sympathy to the families of the victims and assured them that they would receive compensation. A commission of inquiry had, moreover, been appointed by the Government. In conclusion, he emphasized that members of the armed forces had not been involved in that incident.

56. Mr. ZHANG Yishan (China), speaking in exercise of the right of reply, considered that the statements by Amnesty International, Human Rights Watch

and other NGOs were completely unjustified, and noted that certain NGOs were not aware of the major changes that had taken place in the world since the end of the cold war. Instead of encouraging cooperation between States, they stuck to their old habit of making unfounded accusations. Respect for human rights had invariably been one of the Chinese Government's objectives. A mere glance at China's history revealed that, before the creation of modern China, thousands of persons had died of hunger each year, whereas at the present time the needs of the population were being satisfied as a result of the efforts made by the Government; that was a real example of the implementation of human rights. The accusations made by those various NGOs could in no way conceal the successes achieved by the Chinese Government.

57. Mr. WIDODO (Indonesia), speaking in exercise of the right of reply, noted that Portugal had referred to the human rights situation in East Timor and had said that cases of torture, disappearance as well as arbitrary execution had occurred. Yet Portugal was not an impartial observer in the matter, as was obvious from its repeated claim to be the administering Power in East Timor. History revealed that its claims were unfounded, since Portugal had abandoned Timor in mid-August 1975 following a civil war which it had itself provoked. Indonesia was certainly not perfect, but Amnesty International's recent report also referred to torture in Portugal, and that country should put its own house in order instead of accusing other States. Moreover, legislative and administrative measures had been adopted in Indonesia to protect human rights, and those changes were reflected in a number of positive developments. Indonesia had, in that connection, invited the Special Rapporteur on the question of torture and the Special Rapporteur on extrajudicial, summary or arbitrary executions to visit Jakarta and East Timor. The international community should support those new initiatives. In conclusion, he drew attention to the Portuguese delegation's bad faith in referring to the events at Dili as a "massacre" rather than an "incident", which was the word used in the 1992 statement of the Commission's Chairman.

58. Mrs. SABHARWAL (India), speaking in exercise of the right of reply, was of the view that International Education Development Inc. had displayed a poor knowledge of the situation in the State of Jammu and Kashmir. She pointed out that, from a historical point of view, the fact that the State of Jammu and Kashmir belonged to India had been legally established and approved by the people. According to that NGO, India was responsible for the failure to implement the United Nations resolution concerning the plebiscite that was to have been conducted in Jammu and Kashmir; that statement was unfounded. In point of fact, that resolution stated that the plebiscite should be conducted after the cessation of hostilities. However, a foreign Power continued its illegal occupation of part of Jammu and Kashmir in violation of United Nations resolutions. The problem that arose at the present time in Jammu and Kashmir was connected with the territorial ambitions of an outside Power which had failed to realize them on the battlefield and which was trying to achieve them through terrorism, which spared no one. In that context, normal laws had become ineffective and inadequate, and the Indian Government had been forced to adopt special legislation to protect the fundamental rights of its citizens. That legislation, which was reviewed every two years by the Indian Parliament, was applied only in regions where disturbances occurred. Those special laws took into account the rights of individuals, respected habeas corpus and in no way granted impunity to officials responsible for

the administration of justice. Lastly, she emphasized that the State of Jammu and Kashmir had always been open to foreign visitors, ambassadors, journalists and ICRC officials. The very fact that the representative of International Education Development Inc. had been able to visit the region was proof of India's openness on the subject.

59. Mr. PEREZ NOVOA (Cuba), speaking in exercise of the right of reply, said that, despite the United States delegation's allegations, no journalist was imprisoned in Cuba. His own delegation, for its part, doubted whether there had really been an improvement in the situation as regards the injustice experienced by a large number of American citizens for allegedly engaging in propaganda in favour of the enemy. It was most concerned, moreover, by the way in which freedom of expression was manipulated in the United States by the economic and political interests that controlled the media. That was why public opinion had learnt only recently of the serious human rights violation represented by the irradiation of human beings without their consent. The question might well be asked how many other human rights violations remained concealed despite the alleged freedom of expression that prevailed in that country.

The meeting rose at 6.05 p.m.